

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

H. THOMAS MORAN, II, and
JANE E. MORAN,

Plaintiffs

v.

Case No. 10-cv-00393-HE

AVON CAPITAL, LLC, a Wyoming
Limited Liability Corporation,

Defendant.

**DEFENDANT’S MOTION FOR LEAVE TO FILE AMENDED ANSWER TO
PLAINTIFFS’ COMPLAINT**

COMES NOW Defendant Avon Capital, LLC (“Defendant”), by and through the undersigned counsel, and pursuant to Fed. R. Civ. P. 15, moves this Court for Leave to File an Amended Answer to Plaintiffs’ Complaint to add the affirmative defense that the doctrine of novation discharged Defendant of all duties owed under the old Agreement and that a new Agreement was made between the parties. For the reasons set forth below, Defendant respectfully asks this Court to grant its Motion:

1. Plaintiff filed a Complaint on April 19, 2010 in the United States District Court for the Western District of Oklahoma (the “Complaint”) [ECF Doc. 1].
2. Defendant timely filed its Answer to Plaintiffs’ Complaint on June 15, 2010 [ECF Doc. 14].
3. This Court issued its Pretrial Order on September 7, 2010. [ECF Doc. 23]. The deadline for the parties to amend their pleadings is October 7, 2010. [ECF Doc. 23; ¶2].

4. Parties exchanged their initial disclosures pursuant to Fed. R. Civ. P. 26(a) on September 27, 2010.

5. During the course of discovery, Defendant has discovered evidence creating a belief that the original Agreement with Plaintiff cannot be enforced because the parties substituted a new and different Agreement for the original.

6. Defendant desires to amend its pleading to assert the defense of novation.

7. Defendant attempted to contact Plaintiffs' counsel regarding this Motion and Plaintiff's counsel was unable to state Plaintiffs' position prior to the filing of this Motion.

8. Failure to allow Defendant to amend its pleading will deny Defendant the right to assert its defense of novation. Thus, denying Defendant's request to amend its answer would unfairly prejudice Defendant.

9. Justice so requires that leave should be granted.

RELIEF REQUESTED

WHEREFORE, Defendant respectfully asks this Court to grant its Motion for Leave to File an Amended Answer to Plaintiffs' Complaint

Dated this 7th day of October, 2010.

/s/ Alan L. Rupe

Alan L. Rupe

OBA Number: 20440

Attorney for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2010, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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